

COMPLIANCE BOARD OPINION NO. 03-10

June 20, 2003

Ms. Virginia Eckenrode

The Open Meetings Compliance Board has considered your complaint alleging that Council of the Town of Laytonsville violated the Open Meetings Act. Specifically, the complaint alleged that, in connection with meetings concerning proposed amendments to the Town's zoning ordinance, the Council failed to give proper notice of a public hearing and to maintain minutes.

For the reasons explained below, we conclude that the Council did not violate the notice provisions of the Act. However, we do find that the Council's practice of approving minutes only of its regular meetings, but not minutes of other meetings of the Council, violates the Act.

I

Complaint and Response

The complaint alleged several procedural violations in connection with a series of meetings by the Council of the Town of Laytonsville regarding two proposed text amendments to the Town's zoning ordinance. The stated concerns included the adequacy of notice issued in connection with a public hearing; the unavailability of certain documents, including minutes of a public hearing and work sessions; and compliance with certain zoning law requirements and provisions of the Town Code. Because our jurisdiction is limited to interpreting the Open Meetings Act, §10-502.4,¹ we only consider those matters related to the Act, namely, meeting notice requirements and the availability of minutes.

In a timely response on behalf of the Council, Charles White, Mayor of Laytonsville, explained that a decision was made at a Council work session on January 21, 2003, to hold a public hearing on February 11 on two zoning text amendments that had been recently submitted. On January 23, 2003, the Town Clerk prepared a notice that was posted at the Town Hall and mailed to residents of Laytonsville. However, because that notice did not include all the information required under the Town's zoning ordinance, a second notice was issued on January

¹ Unless otherwise noted, all statutory references are to the Open Meetings Act, Title 10, Subtitle 5, of the State Government Article, Annotated Code of Maryland.

29 and posted at the Town Hall and local post office. A second mailing was not done. The hearing was held on February 11, and the record remained open for additional comment.

The Council conducted two work sessions in connection with the zoning text amendments following the public hearing, and it was announced that the record on one of the proposed amendments would close April 1, 2003. At the Council's April 1 meeting, after the adequacy of the notice of the public hearing was challenged, Mayor White indicated that the matter would be investigated. However, the Council proceeded to adopt the zoning text amendment at that meeting.

Subsequently, the Town's attorney advised the Council that a notice provision in the Town Code was inconsistent with notice requirements under State law, Article 66B, §4.04 of the Maryland Code. Thus, a decision was made to conduct a new hearing and reconsider the matter that had been approved April 1. In terms of the method of giving notice, the Mayor advised us that the Town recently adopted a practice of placing hearing notices on its website.

The Mayor disputed the suggestion that minutes are not kept. In fact, minutes of regular meetings are posted on the Town's website. The Town's practice is for the Clerk to prepare minutes of regular Council meetings as well as the Council's work sessions, public hearings, and any closed executive sessions. However, we understand that only the minutes of regular meetings are approved by the Council. Although the information in the latter group of minutes is minimal, we are told that they do include the information that is required under the Act.

The Mayor also addressed the alleged unavailability of various versions of the proposed zoning text amendments under consideration at the time of the request. However, because the availability of the drafts is not a matter regulated under the Open Meetings Act, we decline to address it.

II

Analysis

A. Notice

The Open Meetings Act requires a public body to give reasonable advance notice of a meeting that is subject to the Act, regardless of whether the meeting is open to the public or closed. §10-506(a). In terms of the method of giving notice, the Act gives public bodies such as the Council considerable discretion. *See* §10-506(c). The Act prescribes minimal information that must be provided a part of the notice. The notice must include "the date, time and place of the session" and "if appropriate, ... a statement that a part or all of [the] meeting may be conducted

in closed session.” §10-506(b)(2) and (3). Of course, another statute or local law may prescribe additional requirements that must be complied with in connection with a meeting, such as the zoning matters addressed in the complaint.

The Open Meetings Act addresses conflicts between the Act and other laws. “Whenever [the Open Meetings Act] and another law that relates to meetings of public bodies conflict, [the Act] applies unless the other law is more stringent.” §10-504. However, considering the minimal nature of the Act’s notice requirements, it is unlikely that a conflict would actually result. It is more probable that the notice provisions of the Act and other law may be successfully harmonized.

To be sure, the Council was apparently advised by the municipal attorney that the initial notices issued before the February 11 hearing failed to satisfy Article 66B, §4.04 of the Maryland Code. We express no opinion on this question. The only issue we consider is whether or not the notices satisfied the notice requirements of the Open Meetings Act. Because the initial notice as well as the second notice issued by the Clerk included the minimal information that the Act requires, no violation of the Open Meetings Act occurred.

The complaint focused on information required in connection with a zoning text amendment under the Town Code. However, as we have often repeated, the Open Meetings Act does not require a public body to include an agenda when providing notice of a meeting. *See, e.g., Compliance Board Opinion 99-7 (June 28, 1999), reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board 52, 54, (citing authorities).* Thus, even if the information concerning the zoning text amendment was deficient, no violation of the Open Meetings Act would have resulted.

The complaint also noted that the public should not be expected to check a subsequently posted notice or website after having received the initial notice concerning the public hearing through the mail. However, none of the material elements about the scheduling of the meeting, as required under the notice requirements of the Open Meetings Act, had changed. *Contrast Compliance Board Opinion 01-3 (February 1, 2001), slip op. at 3 (if a public body provides notice and then some material element about the meeting – that is, its date, time, place, and closed or open status – changes, issuance of a revised notice required).* Thus, having concluded that the initial notice satisfied the Act, we need not address the Council’s decision to provide the second notice in an alternative method.

B. Minutes

The complaint alleged that reliance on tape recordings is needed because minutes were unavailable. The Mayor responded that minutes are kept of each meeting. Although it is not entirely clear from the record, it may be that minutes

were not yet available at the time that the request was made. *See, e.g.*, Compliance Board Opinion 01-3 (February 1, 2001), slip op. at 6 (minutes must be available within a reasonable time). However, the Town's response raised a separate concern. Apparently, the Council's practice is to approve the minutes of its regular meetings only.

The Open Meetings Act requires a public body such as the Council to have written minutes of its sessions prepared. §10-509(b). The minutes are public records of the body. §10-509(d). At a minimum, minutes must reflect each item considered, the action taken on each item, and each recorded vote. §10-509(c)(1). In requiring minutes of each meeting, the Act makes no distinction between types of meetings, *i.e.*, whether the body considers a meeting a work session or a regular meeting of the body.

We have previously held that "[a]s a legal matter, the 'minutes of a public body' become such only after the public body itself has had an opportunity to review and correct the work of whoever prepared the draft ..." Compliance Board Opinion 98-3 (May 12, 1998), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 11, 13. Even if minutes of work sessions are available to the public upon request, absent approval of the minutes by the body, it cannot be said that the minutes distributed are truly the minutes of the Council. Thus, the Council's practice of not approving the minutes of each meeting violates the Act. A public body, through the approval process, must accept responsibility for the contents of its minutes.

III

Conclusion

The Town Council of Laytonsville did not violate the notice requirements of the Open Meetings Act in connection with a public hearing on proposed text amendments to the Town's zoning ordinance. However, the failure of the Council to approve the minutes of certain meetings violated the Act.

OPEN MEETINGS COMPLIANCE BOARD

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